

UNITED STATES GOVERNMENT

Regional Counsel Opinion No. 143

Memorandum

ENVIRONMENTAL PROTECTION AGENCY REGION IX

TO : R. O'Connell, Director 302
Enforcement Division

DATE: July 24, 1973

FROM : Cassandra Dunn, Regional Counsel

SUBJECT: Effect of Chapter 45 Public Health Regulations Department of Health,
State of Hawaii on Hawaii's ability to participate in NPDES.

Previously, this office has evaluated Hawaii's Authority to participate in the NPDES. The original evaluation was updated on June 7, 1973 when the effect of certain amendments to Act 100 was considered. We herein consider the effect which Chapter 45 of the Public Health Regulations of Hawaii has on these prior evaluations and hence the the effect on Hawaii's Authority.

The "Entry No."s contained below refer to the entries contained in the earliest evaluation.

ENTRY #1 Previously "authority assumed."

ENTRY #2 Previously "authority assumed."

ENTRY #3 Requirements of 402(b)(1)(A) - Authority present in sections 15 and 19. Except for requirements of section 403 FWPCA for which specific authority is questionable.

Requirements of 124.10 - Authority present in section 4.

Requirements of 124.41: 124.41(a) - section 15(c)(2)(a) - Authority present
(b) - section 15(c)(2)(b) - Authority present
(c) - section 15(c)(2)(c) - Authority present
(d) - section 15(c)(2)(d) - Authority present

Requirements of 124.42: 124.42(a)(1) - section 19(a)(1) - Authority present
(2) - section 19(a)(2) - Authority present
(3) - section 19(a)(3) - Authority present
(4) - section 19(a)(4) - Authority present
(5) - section 19(a)(5) - Authority present
(6) - section 19(a)(6) - Authority present
(7) - section 19(a)(7) - Authority present
124.42(b) - section 19(b) - Authority present

Requirements of 124.43 - section 20 - Authority present

Requirements of 124.44 - section 21 - Authority present

Requirements of 124.45 - section 22 - Authority except for requirements of 124.45(b) for which authority present in section 16.

ENTRY #4 Requirements of 402(b)(1)(B) and 124.51 - Previously "A. P."
Section 15 reiterates authority.

ENTRY #5, 6 &7 Requirements of 402(b)(1)(C)(i)-(iii) and 124.45
(b)(1)-(3) - Previously "A. P." Authority reiterated in section
22.

ENTRY #8 Requirements of 402(b)(1)(D) and EPA regulation 124.80
- Previously "A.P." Authority reiterated in section 1(d)(6).

ENTRY #9 Requirements of 402(b)(2)(A) and 124.61-.64 - Previously
"A. P." Authority reiterated in sections 26 - 29.

ENTRY #10 Requirements of 124.45(c) - "A. P." in section 22(b).

Requirements of 402(b)(2)(B) - A. Q.

No authority here (22(b)) to inspect discharges which are not under permit. Section 342-10 of H. R. S. gives authority to enter and inspect "an actual or suspected source of water... pollution" under this broad mandate, regulations could be passed which would eliminate the questionable nature of regulation section 22(b) of Chapter 45.

ENTRY #11 Requirements of 402(b)(3) - "A. P." in sections 9, 13, 14
of Chapter 45.

Requirements of 124.32: 124.32(a)(1) - A. P. in section 9(a)(1)
 (2) - A. P. in section 9(a)(2)
 (3) - A. P. in section 9(a)(3)
 124.32(b) - A. P. in section 9(b)
 124.32(c) - A. P. in section 9(c)

Requirements of 124.34: 124.34(a) - Not applicable
(b) - Not applicable
(c) - A. P. in section 11(a)
(d) - A. P. in section 11(b)
(e) - A. P. in section 11(c)

ENTRY #12 Requirements of 402(b)(4) - "A. P." in section 6.

Requirements of 124.34(a) - Not applicable

ENTRY #13 Not applicable

ENTRY #14 Requirements of 402(d)(2) - "A. P." in section 15(c)(2)(c)

Requirements of 124.34 - See Entry #11

Requirements of 124.41(c) - "A. P." in section 15(c)(2)(c)

ENTRY #15 Requirements of 402(b)(6) - A. P. in section 15(c)(2)(b)
Requirements of 124.41(b) - A. P. in section 15(c)(2)(b)

ENTRY #16 Requirements of 124.34(b), (d) and (e). See Entry #11

ENTRY #17 See Entry #27

ENTRY #18 Requirements of 402(b)(8) - A. P. in section 22(c)
Requirements of 124.45 (d)(1) - See Entry #3

ENTRY #19 Requirements of 402(b)(8) - A. P. in section 22(c)
Requirements of 124.45(d)(2) - See Entry #3

ENTRY #20 Requirements of 402(b)(8) - A. P. in section 22(c)
Requirements of 124.45(d)(3) - See Entry #3

ENTRY #21 Requirements of 402(b)(9) - A. P. section 22(d)
Requirements of 124.45(e) - See Entry #3

ENTRY #22 Requirements of 402(b)(9) - A. P. section 22(d)
Requirements of 124.45(e) - See Entry #3

ENTRY #23 Requirements of 402(b)(9) - A. P. sections 22 and 12
Requirements of 124.55(c) - See Entry #3

ENTRY #24 Requirements of 303(e) and 124.93 - Authority vague

ENTRY #25 Requirements of 304(h)(2)(A) and 124.61 and .62 - A. P.
see Entry #9

ENTRY #26 Requirements of 304(h)(2)(B) - A. P. section 12
Requirements of 124.63 - A. P. see Entry #9

ENTRY #27 Requirements of 304(h)(2)(C) and 124.73:

- 124.73(a) - A. P. in 342-8, 342-11, 342-12
- (b) - A. P. in 342-9, 342-12 see Regional Counsel Opinion No. 137
- (c) - A. P. in 342-12
- (d) - A. P. in 342-10 and see Entry #10
- (e) - A. P. in 342-11 and 342-12
- (f) Authority questionable. Section 342(11)(b) provides punishment for willful or negligent violation of Part III of Act 100 or implementing regulations. It is unclear whether Department of Health Regulations Chapter 45 is issued pursuant to Part I or Part III of Act 100
- (g) Specific authority is questionable. General authority to pass appropriate regulations in section 3 of Act 100
- (h) - A. P. in section 342-11

ENTRY #28 Requirements of 304(h)(2)(D) - A. P. in section 32
Requirements of 124.94 - A. P. in section 32
Requirements of 124.91 - Authority inherent in section 15

ENTRY #29 Requirements of 402(d)(1) - A. P. in section 6
Requirements of 124.23 - A. P. in section 6
Requirements of 124.46 - A. P. in section 23

ENTRY #30 Requirements of 402(d)(2) - A. P. in 15(c)(2)(c)

ENTRY #31 Requirements of 402(h) - Authority vague

ENTRY #32 Requirements of 402(j) - A. P. in section 12

ENTRY #33 Requirements of 405(c) - Authority lacking

CONCLUSION:

Under the broad powers granted by section 3 of Act 100, regulations may be promulgated to cover areas where authority is lacking or questionable.



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cc: AG (Office of General Counsel)
Washington, D.C.